IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5209 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT DAIRY DEVELOPMENT CORFPORATION LTD.

Versus

NIRANJAN N TRIVEDI

Appearance:

1. Special Civil Application No. 5209 of 1995
MR KM PATEL for Petitioner No. 1
MR MB GANDHI for Respondent No. 1-3,12/B-12/D
MR KR KOSHTI for Respondent No. 4-7,9-10,11/1-11/5
RULE SERVED for Respondent No. 8
..... for Respondent No. 11,12
DELETED for Respondent No. 12/A

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 23/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. The petitioner-Corporation has challenged the award (Part 17), dated 13th June, 1994, passed by the Industrial Tribunal, Ahmedabad, in Reference (I.T.) No. 448/77, by which the grade of pay of the post of Milk Distribution Officer was revised to Rs. 500-25-650-EB-25-750-30-900 with effect from 1.1.76 as against the grade of Rs. 440-750, which was fixed under the earlier award made by the Arbitrator Shri Thakor. It was directed that the benefit of the revised scale should be given to such Milk Distribution Officers till the date of their retirement or till the date of their promotion, as the case may be.

#. A Reference was made by order dated 18th December, 1997, a copy of which is at Annexure:A, under Section 10(3)(i)(b) of the Industrial Disputes Act, 1947 by the Government of Gujarat, of the dispute for adjudication to the Tribunal in respect of 39 demands. We are concerned with Demand No. 30, which reads as under.

"(30) To remove injustice done in the award of Shri I.G. Thakor Saheb. For removing injustice to the clerical and sanitary sub-inspectors, as also engineering supervisory employees in the grades awarded to them by amending the grades."

#. The Tribunal, on the basis of the material on record, came to a finding that the old grade of Foremen working in the Dairy was less than the grade of Foremen working in the Corporation and the Foremen who were working in the Corporation and were getting the grade of Rs. 290-470 were given revised grade of Rs. 500-900, while those Foremen working in the Dairy who were in the grade of Rs. 195-370 were given the revised grade of Rs. 440-750. The Tribunal was of the opinion that the Foremen working in the Dairy were also entitled to get grade of Rs. 500-900 since their demand was justified. The Tribunal directed that the benefit of this revised grade of Rs. 500-900 should be given with effect from 1st January, 1976 to the Milk Distribution Officers since Shift Managers were also given such grade of Rs. 500-900 which grade was upheld by the Supreme Court. It was noted that the posts of Milk Distribution Officer and Shift Manager were inter-transferrable.

#. The learned counsel appearing for the petitioners

contended that there was already an award made by the Arbitrator which was operative and, therefore, no Reference could have been made to the Tribunal for the very same period by claiming higher grade of Rs. 500-900 with effect from 1.1.76. It was submitted that the award made by the Arbitrator Shri Thakor on 8.1.76 continued to operate by virtue of the provision of Section 19(6) of the Industrial Disputes Act, 1947 and, therefore, the Reference was without jurisdiction. It was further argued that the terms of Reference made in the present case did not cover the category of Milk Distribution Officer and, therefore, the benefit of revised grade could not have been extended to the Milk Distribution Officers. It was finally argued that the Company was a sick industrial undertaking which had become sick after the award was made. However, its weak financial position was brought on record in the deposition of the witness examined on behalf of the Company and in view of its critical financial position, the Tribunal was not justified in awarding full consequential benefits on the basis of the revision of grade which was again made effective from 1.1.76. The learned counsel submitted that on 22.9.95, an order was made on this petition while issuing rule that 25% of the amount of arrears shall be paid pursuant to the award to these respondents and that such amount had already been paid and, therefore, having regard to weak financial position of the Company, no further amount should be directed to be paid from the arrears payable to these respondents.

#. The terms of Reference in respect of Demand No. 30, a copy of which is at Annexure:A to the petition and which is reproduced above show that the Reference was made for revising the grades of various categories of employees including Engineering Supervisory Employees of the Dairy. While dealing with the contention that the Milk Distribution Officers were not falling in the category of Storekeepers and Electrical and Foremen Mechanical, the Tribunal, on the basis of the deposition of Shri Dhirubhai Vaghela, Deputy Manager (Personnel and Administration) of the appellant-Corporation, came to a finding that the Milk Distribution Officers were in the category of Engineering Supervisors. From the deposition, exh. 254 of Shri Dhirubhai Vaghela, which is on record, it clearly transpires that the duties of the Milk Distribution Officers and Shift Managers were of technical nature. He has stated that the incumbents working as Milk Distribution Officer and Shift Manager were inter-transferrable. He has, in terms, stated in the examination-in-chief that Milk Distribution Officers fell in technical category. On the basis of the evidence

on record, the Tribunal in para 10 of its award, came to a finding that Milk Distribution Officers belonged to Engineering Supervisory category. It, therefore, cannot be said that the Reference did not include Milk Distribution Officers, which, as held by the Tribunal fell in the category of Engineering Supervisory Employees, which was clearly mentioned in the Demand No. 30.

#. The other contention raised before us was that the Tribunal could not have made its award and that it was barred by res judicata in view of the previous award made by Arbitrator Mr. Thakor on 8.1.76, giving grade of Rs. 440-750 to the category of employees in which Milk Distribution Officers fell. This aspect has been considered in para 11 of the award and the Tribunal has held that, no such objection was raised earlier when awards were made in 16 parts in this very Reference and that contention was not urged before that earlier awards were made in this very Reference and it was canvassed only at the time of arguments. The Tribunal noted that as per Demand No. 30, the employees wanted redressal of their grievance that injustice done to them by awarding lesser grade should be removed and in such a matter, doctrine of res judicata cannot be invoked. The contention of the learned counsel that the award earlier made by the Arbitrator on 8.1.76 was still operative since it was not terminated, has no factual basis. Admittedly, no such contention was raised before the Tribunal and it was never stated before the Tribunal that the earlier award of the Arbitrator was not terminated. Under Section 17-A of the said Act, an award including an arbitration award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. Section 19(3) provides that an award shall, subject to the provisions of Section 19, remain in operation for a period of one year from the date on which the award becomes enforceable under Section 17-A of the Act. By sub-section (6) of Section 19, it is laid down that notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has lapsed from the date on which notice is given by any party bound by the award to the other party or parties, intimating its intention to terminate the award. This provision is obviously intended to prohibit any hiatus after the period of award contemplated by sub-section (3) of Section 19 is over. It was nobody's case before the Tribunal that the award made on 8.1.76 was not terminated and we cannot allow the appellant to urge that factual aspect for the first time before the Court, when the

Tribunal had no opportunity to consider and deal with the said factual aspect of the matter. It cannot, therefore, be said that the impugned award was made during the currency of the earlier award. Since the question that the earlier award was not terminated was never raised before the Tribunal, the reliance placed by the counsel for the appellant on decision of the Supreme Court in Management of the Bangalore Woolen, Cotton and Silk Mills Co. Ltd. Vs. Workmen and another, reported in AIR 1968 SC 585, is misconceived.

#. In the present case, the Reference which led to the passing of the impugned award was made on 18th December, 1977 i.e. after the completion of one year of the earlier award rendered on 8.1.76 with effect from 1.1.76. That award was enforceable on the expiry of 30 days from the date of its publication under Section 17, as provided by Section 17-A(1) and its life was for one year from the date on which it became enforceable in the provisions of Section 19(3) of the Act. Giving allowance of the fact that the earlier award became enforceable on the expiry of 30 days from the date of its publication, and the fact that a two months' notice was to be given for its termination, under sub-section (6) of Section 19, the earlier award would, at best, have continued to operate till April, 1977 while the Reference was made on 18.12.'77. Both the sides are unable to tell us, despite being repeatedly asked, as to on which date, the notice of demand was served, on the basis of which the present Reference was made on 18.12.'77. It is not possible for us, in the absence of any contention having been raised before the Tribunal to the effect that the earlier award was not terminated, to infer that no Reference was made during the currency of that award. The Reference was made by the State Government and ordinarily, it would have been made only after the termination of the earlier award.

#. One aspect, however, remains to be considered in the context of the date from which the present award is made effective. The earlier award giving grade of Rs. 440-750 was made effective from 1.1.'76. That award remained operative and final during the period of its currency. Obviously therefore, the grade which was now revised again could not have been made effective from 1.1.'76 for the period during which the earlier award governed the field. Therefore, the benefit of the revised grade under the present award could not have been given from 1.1.'76. Since the Reference was made on 18.12.'77, we would modify the present award by giving effect of the revised grade to the respondents from

18.12.'77 instead of 1.1.'76.

#. It was argued that the Tribunal has not directed itself to the financial condition of the employer though in the deposition of Dhirubhai Vaghela, a copy of which is at Annexure:B to the petition, it stated in the examination-in-chief, which fact was not questioned in the cross-examination, that the Dairy was suffering losses and that its financial position was adversely affected. In this context, the learned counsel places reliance on the decision of the Supreme Court in Shivraj Fine Arts Litho Works and others Vs. The State Industrial Court, Nagpur and others, reported in AIR 1978 SC 1113, in which it was held by the Supreme Court in para-27 of the judgment that the consequences such as, though the employees were not entitled to be given the increase in wages from the date of Reference, it may not be practicable taking into account the considerable lapse of time and the employers may not have the capacity to pay the entire arrears or that they may be able to make payment in installments, are required to be considered depending on the facts and circumstances of each case. In the present case, according to the petitioner its financial condition is in doldrums and we are told that it is declared to be a sick Company. We are, however, told that even after the voluntary retirement scheme under which the present respondents parted with a golden hand-shake, there were many employees in respect of whom, the government has now sanctioned loans by their resolution dated 7.5.2002. Copy of the said resolution placed on record shows that Rs. 7,50,00,000/- have been sanctioned by the government by way of loan for paying the dues of the present employees. Thus, when arrangement is made by granting loan of Rs. 7,50,00,000/- for the employees, who are on the payroll without any work, there is no valid reason why any amount should be deducted from the dues payable to these respondents pursuant to the revised grade. There exists no valid ground for reducing the amounts payable to these respondents pursuant to the revised grade given to them which will now be effective from 18.12.'77 instead of 1.1.'76. The contention raised on behalf of the petitioner cannot therefore be accepted.

##. In our opinion, the Tribunal has not committed any error in exercise of its jurisdiction in awarding the revised grade and subject to the modification that the revised grade will be effective from 18.12.'77 instead of 1.1.'76 the petition is rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.] [KUNDAN SINGH, J.]

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